

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE CONFERENCE of the NATIONAL
ASSOCIATION for the ADVANCEMENT of
COLORED PEOPLE, et al.,

Plaintiffs,

v.

WILLIAM LEE, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendants.

Civil No. 3:20-cv-01039

JUDGE CAMPBELL
MAGISTRATE JUDGE FRENSELY

**PLAINTIFFS' SUR-REPLY IN OPPOSITION TO DEFENDANTS' EMERGENCY
MOTION FOR A STAY OF PERMANENT INJUNCTION PENDING APPEAL**

Plaintiffs respectfully file this sur-reply to address late-disclosed documents and facts that have come to light through Plaintiffs' June 18 Depositions of Defendant Goins and the Elections Division's Rule 30(b)(6) representative. The new documents show that Defendants had already made significant progress towards compliance with both the Court's order of injunctive relief on Count Six, Doc. 237 ("the Order") and with Defendants' erroneous understanding of that order, but then undid that progress. The new evidence also demonstrates that Defendants fundamentally misunderstand the Court's order and that Defendants' claims that new procedures would be unduly burdensome is false.

The timeline of Defendants' previously undisclosed activity is as follows:¹

On June 5, Defendant Goins issued a memorandum to county election offices alerting them to the Order and stating, "In summary, Judge Campbell ordered the state to register an individual

¹ Because these documents were not timely disclosed, Plaintiffs were deprived of the opportunity to ask questions about them at the depositions. As a result, this timeline relies on the information on the documents themselves and the limited testimony at the depositions.

even if the person has answered ‘Yes’ to the felony question and provided no proof of eligibility, unless there is ‘credible information establishing’ that the person is ineligible to vote.” Ex. 2. The memorandum further directed, “do not reject an application from an individual who has marked ‘Yes’ to the felon question. All forms with a ‘Yes’ should be sent to Lou Alsobrooks, [staff at the Elections Division], for review using secure email protocols.” *Id.* On June 10, Defendant Goins held a roughly 35-minute training session on compliance with the order for all county administrators of elections (AOEs). Ex. 1. During the training, the Elections Division stated again that the Order requires the state to register any individual “even if” the person has answered yes to the felony question. Ex. 1 at 0:55-1:09. At no point in the training did the Elections Division address or even mention the significance of the question on the state registration form asking if a person with a felony conviction has “received a pardon or had [their] voting rights restored,” making clear that Defendants do not understand that the Order only applies to facially eligible applicants. The Elections Division directed the AOEs to send all applications from people with felony convictions to the Elections Division, unless they indicate that they have a felony in the grace period or pre-1973. Ex. 1 at 18:02-18:15, 24:08-24:33. If the individual has a pre-1973 felony that is enumerated as potentially infamous, it should be sent to the Elections Division rather than rejected. Ex. 1 at 12:10–12:41. For individuals with these older felony convictions, the Elections Division directed the AOEs to continue to follow the policies outlined in the July 2023 memorandum on older felony convictions. Ex. 1 at 10:58-12:09. Additionally, regarding applicants who use the federal form, which does not include specific questions about felony convictions, Defendant Goins directed that where the AOE possesses information that the applicant has a felony conviction to send it to the Elections Division. Ex. 1 at 3:14-3:47. Coordinator Goins also stated during that meeting that the Elections Division had already updated the voter registration form to remove language about additional documentation. Ex. 1 at 14:46-15:04; 15:16-15:35. He directed the AOEs to link to the revised form and to print it out for

use in their office. Ex. 1 at 15:45-15:59; 26:08-26:25. On June 12, the Elections Division issued a memo stating much the same. Ex. 3. Two days later, on June 14, 2024, Coordinator Goins issued another memorandum regarding the Sixth Circuit's administrative stay of this court's Order following Defendants' premature motion for stay at the Sixth Circuit, instructing:

[b]ecause of the stay, you do not need to send forms to the Division of Elections from individuals who have marked 'yes' to the felony question. You should continue to follow the prior process outlined in the July 21, 2023 memo.

If you have already sent forms to this office, you do not have to wait for a response from us. You should continue to follow the prior process for these forms.

You should also use the prior versions of the voter registration form and appeal form. The training site is being updated accordingly, and we have put a request into our IT to ensure our website is updated.

Ex. 4. Finally, at some point between this Court's injunction on June 5 and before the June 10 training, Defendants created and published a new voter registration form which omitted the language requiring that an applicant provide additional documentation if they marked "Yes" to the felony question. Ex. 2-3, 5; *see also* Ex. 1 at 14:40-15:35. On June 12, Defendants sent a formal memo with the updated voter registration forms. Ex. 3. At some point after the Sixth Circuit granted an administrative stay of this Court's injunction on June 14 (and while Defendants' Motion to Stay was pending before this Court), Defendants appear to have removed from the Secretary of State's website the voter registration form they created in response to this Court's injunction and replaced it with the previous version. Ex. 4. The revised registration form created after June 5 is attached as Exhibit 5 and the older form that is presently published on the Secretary of State's website is attached as Exhibit 6.

The new documents show that Defendants had already made substantial progress towards both compliance with the actual requirements of the Order and as well as towards implementing the voter changes that Defendants have erroneously claimed are necessary to comply with the Order, but then rolled back that progress and confusingly retracted the updated voter registration form while

arguing to this Court and the Sixth Circuit that compliance would create undue administrative burdens. The Order states that, “[u]nder the NVRA, applicants who timely submit a completed voter registration application developed pursuant to Sections 20505(a)(2) or 20508(a)(2) of the National Voter Registration Act *facially indicating they are eligible* to vote cannot be required to present documentary proof of eligibility beyond the voter registration form and must be registered absent credible information establishing that they are ineligible to vote.” Doc. 237 at PageID # 3825 (emphasis added). It permanently enjoins Defendants and their agents from rejecting voter registrations “based *solely* on an indication that the applicant has a past felony conviction and requiring the applicant to provide additional documentary proof of eligibility before being placed on the voter rolls.” *Id.* (emphasis added). The Court specifically ordered Defendants to process valid and timely voter registration forms from individuals with felony convictions “who are otherwise eligible to vote” and to register them “absent credible information establishing that they are ineligible to vote.” *Id.* at PageID # 3826. To effectuate the injunction, the Court also ordered Defendants to issue written guidance to and hold at least one live, recorded training for county election staff and administrators on compliance with the order. *Id.* Despite their substantial misunderstanding of which voter registrations the Order impacts, described below, the new documents show that Defendants surreptitiously made substantial progress towards complying with the *actual* terms of the order – namely issuing a written memorandum on new procedures and holding a training – and publicly promulgated an updated voter registration form, as they claimed was required, all the while arguing that compliance was too burdensome.

More importantly, the newly disclosed documents and additional testimony also make clear that Defendants fundamentally misunderstand the meaning of and requirements of the Court’s Order. This misreading forms the basis of Defendants’ assertions that compliance would create significant administrative burdens, the core of their arguments for a stay. Defendants apparently believe that the

Court's order prevents them from rejecting *any* voter registration applicant who indicates that they had a felony conviction after May 18, 1981. Not so. Following the letter of the NVRA, the Court's order enjoins Defendants from rejecting applications "*facially indicating they are eligible*" absent credible information that they are ineligible. For registrants who indicate they have felony convictions after May 18, 1981, they are only *facially eligible* or "*otherwise eligible*" if they check the box indicating that they have already had their voting rights restored. Defendants' documents and training do not mention this part of the form at all, and the Rule 30(b)(6) testimony makes clear that they did not consider it. This makes clear that Defendants entirely missed that distinction and premise their arguments for a stay on the incorrect assumption that the Court's order requires the Elections Division to verify the eligibility of *every single voter registration applicant* with a felony conviction after May 18, 1981.

Additionally, testimony in the June 18 depositions reveal that compliance with the Court's order would not be burdensome. While the Court's order enjoins election officials from rejecting voter registrations from *facially eligible*, or *otherwise eligible*, registrants – i.e., registrants who indicate they have a non-disqualifying conviction or that their rights have been restored – absent evidence establishing ineligibility, it neither requires nor prevents Defendants from double-checking the registrants' assertions about their eligibility, as long as it does so within the required timeline for processing registrations. If that check reveals credible evidence that the individual is disqualified from voting and has not had their rights restored, election officials may, under the terms of the order and the NVRA, request additional documentation. Testimony shows that even if the Elections Division voluntarily brings back their very short-lived policy of requiring AOE's to refer all applicants who indicate they have a felony but are still *facially eligible* (because of non-disqualifying convictions or restorations) to the Elections Division, it would not in fact create a significant burden on Defendant or the AOE's. Ex. 7, Deposition of Beth Henry-Robertson at 55:15-22. In fact, the

testimony made clear that prior to short-lived policy, many AOE's already had a practice of referring these applications to the Elections Division to double check eligibility. Ex. 7 at 63:15-24. Moreover, the 30(b)(6) witness reported that there had not been a significant increase in these inquiries since the Defendant Goins issued the memo about processing older felonies. Ex. 7 at 55:23-56:13. They have not had to hire additional staff or shift resources to handle an increase in these inquiries. Ex. 7 at 56:14-18; 64:5-7. Additionally, the witness testified that it "doesn't take long" and is not burdensome for the Election Division's staff to check their database to see if an applicant has already been restored. Ex. 7 at 55:3-12; 56:17-18. She also testified that sometimes the AOE's will want the Elections Division to run a full database check to see if the person has had additional felony convictions since being restored, and that this process could take more time. Ex. 7 at 57:8-58:9. Crucially, she stated that whether or not the applicant had submitted documentary proof of their restoration would not make a difference to the decision to perform that additional inquiry. Ex. 7 at 58:13-59:9. In short, even if the Elections Division decides to implement additional checks on facially eligible registrants with felony convictions - a procedure neither prohibited nor compelled by the Order - it would not be burdensome and the enjoined proof of eligibility requirement would be immaterial to the amount of resources spent.

These intervening events display a lack of candor by Defendants in advancement of their Motion to Stay. Specifically, Defendants Goins testified in his declaration in support of Defendants' Motion that "[t]wenty-five (25) days is not sufficient time for us to make the necessary revisions to the State's paper voter registration form." Doc. 243-1 at ¶16. But Defendants had already made and published those changes to the website before filing their Motion to Stay. Ex. 5. Indeed, Defendant Goins testified at the June 18 deposition that he thought the last time his office updated the voter registration form was in 2020, when he had actually done so less than two weeks prior. Ex. 8, Deposition of Mark Goins at 127:2-7. He also testified that if he were required to change the form

under a court order he would still have to edit and vet the form. Ex. 8 at 131:4-11. Additionally, Defendant Goins' testimony in his declaration that "additional staff members," and "[e]stablishing a statewide database of persons with felony convictions" would be required is undercut by the later Rule 30(b)(6) testimony that *none* of these things are required to comply with the Court's order. Compare Doc. 243-1 at ¶¶ 18-20 with Ex. 7 at 55:3-12; 56:14-18; 64:5-7.

It is worth emphasizing that Defendants did not inform this Court nor Plaintiffs that a new registration form was created and that a training of the AOFs had already occurred despite having done so before seeking a stay at this Court and the Sixth Circuit. In neither stay motion did Defendants mention that a voter registration form had been published or that training and memoranda to the AOFs had already been provided. Then, Defendants retracted that voter registration form, apparently while they were arguing to this Court and the Sixth Circuit that "[t]here simply is not enough time for the Division of Elections to make the court-ordered changes while faithfully discharging their various other election-related duties." Doc. 243 at PageID # 3869; Appellants' Emergency Motion for a Stay Pending Appeal and an Immediate Administrative Stay at 18, *Tennessee NAACP v. Hargett*, No. 24-5546 (June 12, 2024) ("It simply is not feasible for that all to happen before the July 2, 2024 registration deadline.").

Defendants' lack of candor regarding their efforts to implement the Court's order, their misunderstanding of the Courts Order and its requirements, and indeed all the time and resources now spent briefing this issue at this Court and the Sixth Circuit, and the Court's and the Sixth Circuit's time spent judging this matter, could very likely have been avoided if Defendants had simply engaged in good faith discussions over the content of the Order, as they were mandated to do. Doc. 222 at PageID # 3693. In addition to several rounds of discussions since 2019 when Plaintiffs first notified Defendants that the challenged policy violated the NVRA, Plaintiffs have recently provided Defendants with specific, straightforward recommendations for how to comply

with the Order on Count 6, orally at the meeting on May 1, 2024, *see* Doc. 226 at PageID # 3708, and in writing in their proposed order, Doc. 226-1. But Defendants had chosen to eschew those simpler, commonsense procedures and instead opted to jump through hoops which plainly go beyond the requirements or meaning of the Court's Order, then complain about those voluntary procedures, complaints which, additional evidence shows, are greatly exaggerated.

Defendants' unnecessary policy flip-flopping is likely to confuse county registrars and lead to *more* NVRA violations *and* more public confusion in the weeks before an election. It is appropriate then for the Court to deny the stay so that Defendants may implement the remedy they already began and to modify the order so that Defendants correctly understand the scope of registrations impacted. To clarify how the Court's injunction applies to eligible voters whose voting rights have been restored, Plaintiffs respectfully request that the Order be modified to include the following language adapted from language initially proposed in Plaintiff's proposed order, *see* Doc. 226-1 at ¶ 1.c:

If a valid, timely submitted voter registration application indicates that the applicant has a prior felony conviction but had their voting rights restored and the rest of the form shows they are otherwise eligible to vote, the applicant cannot be rejected or required to provide documentary proof of eligibility unless the relevant county election office has solicited and received confirmation in writing from Tennessee Election Officials that the state does not possess a restoration letter or other proof that the applicants' voting rights were restored. Tennessee Election Officials may conduct a search for such records. Because Tennessee Election Officials' position regarding the requirements for voting rights restoration have shifted over time, a previous voter registration form submitted by the applicant that was accepted by the state and resulted in active voter registration in Tennessee on which the applicant correctly indicated that they had been convicted of a felony shall be considered sufficient proof that applicants' voting rights were restored, so long as there is not credible evidence establishing that they have been disqualified by another felony conviction since. If Tennessee Election Officials run this check and find no proof of restoration, then the Elections Division has credible information establishing that the applicant is not eligible to vote. At that point, they may deny the registration and request additional documentation. A person who is restoring their voting rights for the first time after their most recent felony conviction, by definition will not have a current restoration letter on file with the Elections Division. Thus, for such applicants, Tennessee Elections Officials may request the

restoration documents at the time of registration.

CONCLUSION

Plaintiffs respectfully ask that the Court deny Defendants motion for a stay. Additionally, in the interest of judicial efficiency, Plaintiffs respectfully ask the Court to amend its Order to clarify what specifically is required of Defendants.

Dated: June 21, 2024

/s/ Charles K. Grant

Charles K. Grant, BPR No. 017081
Denmark J. Grant, BPR No. 036808
BAKER, DONELSON, BEARMAN, CALDWELL &
BERKOWITZ, PC
1600 West End Avenue, Suite 2000
Nashville, TN 37203
Telephone: (615) 726-5600
Facsimile: (615) 726-0464
cgrant@bakerdonelson.com
dgrant@bakerdonelson.com

Phil Telfeyan
Equal Justice Under Law
400 7th St. NW, Suite 602
Washington, D.C. 20004
(202) 505-2058
ptelfeyan@equaljusticeunderlaw.org
nbaker@equaljusticeunderlaw.org

Counsel for Plaintiffs

* Admitted pro hac vice

Respectfully submitted,

Blair Bowie*
Danielle Lang*
Alice C. Huling*
Valencia Richardson*
Aseem Mulji*
Ellen Boettcher*
Kate Uyeda, BPR No. 040531
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005
(202)-736-2200
Bbowie@campaignlegal.org
Dlang@campaignlegal.org
Ahuling@campaignlegal.org
VRichardson@campaignlegal.org
Amulji@campaignlegal.org
Eboettcher@campaignlegal.org
KUyeda@campaignlegal.org

Keeda Haynes, BPR No. 031518
Free Hearts
2013 25th Ave. N,
Nashville, TN 37208
(615) 479-5530
keeda@freeheartsorg.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on June 21, 2024,
via the Court's electronic filing system to the following:

Dawn M. Jordan
Zachary L. Barker
Andrew C. Coulam
David M. Rudolph
Robert W. Wilson

Office of the Tennessee Attorney General
Public Interest Division
P.O. Box 20207
Nashville, TN 37202

/s/ Charles K. Grant

Charles K. Grant

Exhibit 1

The link to the recording of the Training Call produced by Defendants is available at this link:

<https://tn.webex.com/recordingservice/sites/tn/recording/9dde5de04454276b107f1d7c8934c19/playback>

Exhibit 2

Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: All County Election Commissions

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: June 5, 2024

Subject: Court Order on Voter Registration for Individuals with Prior Felony Convictions

This afternoon, U.S. District Judge William L. Campbell, Jr. issued an order in the ongoing litigation regarding voter registration for individuals with prior felony convictions. The order is attached to this memo.

In summary, Judge Campbell ordered the state to register an individual even if the person has answered "Yes" to the felony question and provided no proof of eligibility, unless there is "credible information establishing" that the person is ineligible to vote.

We are still in the process of reviewing the order and all its implications but wanted to get this information to you as soon as possible.

The court has also ordered that we schedule a training session, and more details will be provided at that training. In the meantime, do not reject an application from an individual who has marked "Yes" to the felon question. All forms with a "Yes" should be sent to Lou Alsobrooks for review using secure email protocols.

Thank you for your dedicated service to Tennessee voters.

sos.tn.gov

Page 1 of 1

Exhibit 3

Tennessee Secretary of State
Tre Hargett



Elections Division
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: All County Election Commissions

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: June 12, 2024

Subject: Processing Voter Registration Applications with Felony Question Marked "Yes"

On June 5, 2024, U.S. District Judge William L. Campbell, Jr. issued an order in the ongoing case *Tennessee Conf. of the NAACP v. William Lee* regarding voter registration for individuals with prior felony convictions. The order issued by Judge Campbell requires the state to register an individual even if the person has answered "Yes" to the felony question and provided no proof of eligibility, unless there is "credible information establishing" that the person is ineligible to vote. As the initial receiver of applications, it is incumbent upon county election commissions to follow the instructions outlined below to ensure that the state remains in compliance with the court order.

Processing Applicants Using the State Mail-In Voter Registration Form

A county election commission that receives an application using a state mail-in voter registration form that meets the criteria below **must** be sent to the Division of Elections to confirm whether the Division of Elections has a record that the applicant's voting rights have been restored:

- a. The applicant marked "Yes" to the felony question; **or**
- b. County election commission has evidence of a prior felony conviction for the applicant.

If the Division of Elections informs the county election commission that there is a record showing that the applicant's voting rights **have been** restored for all known felonies, the county election commission will not reject the application, but **must process** the applicant's voter registration.

sos.tn.gov

Page 1 of 3

If the Division of Elections informs the county election commission that no record of the applicant's restoration of voting rights has been found for all known felonies, the county election commission will **reject** the applicant's voter registration and **provide** the applicant with the voter registration appeal form, and the Certificate of Restoration of Voting Rights, which contains a summary of the two-step process the applicant must complete to have their voting rights restored to become eligible to vote.

Processing Applicants Using the Federal Voter Registration Form

Since the federal form does not contain a "yes" or "no" felon question, a county election commission that receives an application using the federal voter registration form will continue to process the application, unless the county election commission's records indicate that the applicant has a prior felony conviction.

If a county election commission has evidence that the applicant using the federal voter registration form has a felony conviction, the county election commission will not reject the application, but **must** send the application to the Division of Elections to confirm whether the Division of Elections has a record that the applicant's voting rights have been restored.

If the Division of Elections informs the county election commission that there is a record showing that the applicant's voting rights **has been restored** for all known felonies the county election commission must process the applicant's voter registration.

If the Division of Elections informs the county election commission that no record of the applicant's restoration of voting rights has been found, the county election commission will **reject** the applicant's voter registration and **provide** the applicant with the voter registration appeal form, and the Certificate of Restoration of Voting Rights, which contains a summary of the two-step process the applicant must complete to have their voting rights restored to become eligible to vote.

Processing Applicants with Felony Convictions Prior to January 15, 1973

A county election commission that receives a voter registration application from an applicant who indicates that he/she was convicted of a felony prior to January 15, 1973, should be processed using the criteria below:

Assuming all other information on the form is acceptable and eligibility requirements are met, an applicant that identifies on the face of their voter registration form that prior to January 15, 1973, they were not convicted of one of the possible disqualifying crimes for which the court did not find them **infamous**, is eligible to register to vote because the applicant did not lose their right to vote. Accordingly, the applicant's voter registration **must be processed**.

If a county election commission receives a voter registration application from an applicant who indicates on the face of their registration that they were convicted of one of the disqualifying crimes and declared infamous, the applicant's voter registration application **must** be sent to the Division of Elections for review.

Processing Applicant's with Felony Convictions between January 15, 1973, and May 17, 1981

If a county election commission receives a voter registration application from an applicant that identifies on the face of their voter registration form that they were convicted of a felony between January 15, 1973, and May 17, 1981, and assuming all other information on the form is acceptable and eligibility requirements are met, the applicant's voter registration **must be processed** as the applicant never lost the right to vote.

Processing Deficient Registration Forms

For voters who do not answer "yes" or "no" to the felony question on the state form, continue to treat these forms as deficient registrations.

If an applicant comes in to correct the deficiency and they mark "yes" to the felony question, you will send the form to Lou.

Instructions for Submitting to Division of Elections

- For applications sent by secure email, send to vcheck@tn.gov and place the following information in the subject line: Applicant's **last name** and the word **registration** (Ex- Doe registration)
- For county election commissions using the state email system (tn.gov) a secure email must include [secure email] at the beginning of the subject line.
- For applications sent by fax, use (615) 741-1278 and put the following on the fax cover sheet:
To: Lou Alsobrooks
Subject: Applicant's **last name** and the word **registration** (Ex- Doe registration)
- Lou Alsobrooks can be reached by calling (615) 253-5778

Updated Forms

The voter registration form posted on our website and the voter registration appeal form have been updated in light of the order. Both forms are included with this memo with a revision date of 06/24. The voter registration form is available online at <https://sos.tn.gov/elections/services/register-to-vote-paper-form-mail-in-or-hand-deliver>. ***Please be sure your websites are updated to point to the updated form. The appeal form is available on the training website.***

Exhibit 4

Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: All County Election Commissions

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: June 14, 2024

Subject: Administrative Stay of Court Order

This afternoon, the United States Court of Appeals for the Sixth Circuit issued an administrative stay of the order we discussed with you earlier this week. This means that the lower court decision is on hold until further notice.

Because of the stay, you do not need to send forms to the Division of Elections from individuals who have marked "yes" to the felony question. You should continue to follow the prior process outlined in the July 21, 2023 memo.

If you have already sent forms to this office, you do not have to wait for a response from us. You should continue to follow the prior process for these forms.

You should also use the prior versions of the voter registration form and appeal form. The training site is being updated accordingly, and we have put a request into our IT to ensure our website is updated.

Thank you for your patience as we work through the appellate process.

Exhibit 5

Tennessee Mail-In Application For Voter Registration

You can use this form to:

- register to vote in Tennessee or change your name and/or address.

To register to vote:

- you must be a U.S. citizen, AND
- you must be a resident of Tennessee, AND
- you must be at least 18 years old on or before the next election, AND
- If you have had a felony conviction, your eligibility to register and vote depends upon the crime you were convicted of and the date of your conviction. To assist in processing your application, provide the required information in box 4. For more information about this process, call **1-877-850-4959** or visit **sos.tn.gov/restoration**.

Are you interested in working on Election Day? ☐ YES ☐ NO

Instructions/Checklist:

- ☐ Please PRINT with a blue or black **INK** pen (not felt tip).
- ☐ Provide the information in boxes 1–4 below, read the VOTER DECLARATION in box 5, and sign by the “X” in box 5.
- ☐ You must mail or hand deliver this form to your county election commission at least 30 days before an election. Go to **sos.tn.gov/election-commission** to find your county election commission address.
- ☐ To ensure a more confidential mailing process for this form, you can place this application in an envelope addressed to the county election commission.

If you register by mail, you must vote **IN PERSON** the first time you vote after registering.

If you are qualified and the information on your form is complete, we will add your name to the county's voter rolls. We will then mail you a voter registration card. This card will tell you where to vote.

Names of persons selected for jury service in state court are not chosen from permanent voter registration records.

Voter registration records are public records, open to inspection by any citizen of Tennessee, excluding social security numbers.

Federal or Tennessee state government-issued photo ID is required to vote unless exception applies.

Warning: Knowingly giving false information to register to vote or attempting to register when not qualified is a felony punishable by not less than two (2) years nor more than twelve (12) years imprisonment or a fine of \$5,000 or both.

FOR COUNTY ELECTION COMMISSION USE ONLY

Mail _____ Reg # _____ Approved _____
Effective Date _____ P/A _____
District _____ Precinct _____ Ward _____

1 VOTER ELIGIBILITY

Are you a citizen of the United States?
☐ YES ☐ NO

Are you a resident of the State of Tennessee?
☐ YES ☐ NO

Will you be 18 or older on or before Election Day?
☐ YES ☐ NO

If you answered “No” in response to any of the above, do not complete this form.

2 PERSONAL DETAILS

Last Name: _____ First Name: _____ Middle Name: _____ Suffix: _____

SSN: _____ / _____ / _____ Date of Birth: _____ / _____ / _____ Sex: ☐ M ☐ F Race (optional): _____

Place of Birth (city/state): _____ Phone: (_____) _____ - _____

Residential Address: _____ (no PO box) Apt #: _____ City: _____

State: _____ Zip Code: _____ County: _____ Email (optional): _____

Mailing Address (if different): _____

3 LAST ADDRESS OF VOTER REGISTRATION (if any)

Name: _____ Address: _____ Apt #: _____

City: _____ State: _____ Zip Code: _____ County: _____

4 FELONY CONVICTION Have you ever been convicted of a felony? (If expunged, answer “no”) ☐ YES ☐ NO If yes, provide the following information (if known).

Crime(s): _____ Date (mo./yr.): _____

Place (city/state): _____ Have you received a pardon or had your voting rights restored? ☐ YES ☐ NO

5 VOTER DECLARATION: I, being duly sworn on oath (or affirmation), declare that the above address is my legal residence and that I plan to remain at such residence for an undetermined period of time and say that to the best of my knowledge and belief all of the statements made by me are true.

X
Signature of Applicant

/ /
Date

Signature of Person Assisting Applicant

Address of Person Assisting Applicant



ss-3010 (Rev. 06/24)

FROM:

PLACE
STAMP
HERE
The Post Office
will not deliver
without postage.



Voter Registration Document - Please Do Not Delay

TO:

_____ COUNTY ELECTION COMMISSION

TRANSFERRED TO NEW ADDRESS

New Address (and mailing address if different)	District/Ward/ Precinct	Clerk	Date	Additional Information

Exhibit 6

Tennessee Mail-In Application For Voter Registration

You can use this form to:

- register to vote in Tennessee or change your name and/or address.

To register to vote:

- you must be a U.S. citizen, AND
- you must be a resident of Tennessee, AND
- you must be at least 18 years old on or before the next election, AND
- If you have had a felony conviction, your eligibility to register and vote depends upon the crime you were convicted of and the date of your conviction. To assist in processing your application, provide the required information in box 4 and any responsive documents you have. For more information about this process, call **1-877-850-4959** or visit **sos.tn.gov/restoration**.

Are you interested in working on Election Day? ☐ YES ☐ NO

Instructions/Checklist:

- ☐ Please PRINT with a blue or black **INK** pen (not felt tip).
- ☐ Provide the information in boxes 1–4 below, read the VOTER DECLARATION in box 5, and sign by the **"X"** in box 5.
- ☐ You must mail or hand deliver this form to your county election commission at least 30 days before an election. Go to **sos.tn.gov/election-commission** to find your county election commission address.
- ☐ To ensure a more confidential mailing process for this form, you can place this application in an envelope addressed to the county election commission.

If you register by mail, you must vote **IN PERSON** the first time you vote after registering.

If you are qualified and the information on your form is complete, we will add your name to the county's voter rolls. We will then mail you a voter registration card. This card will tell you where to vote.

Names of persons selected for jury service in state court are not chosen from permanent voter registration records.

Voter registration records are public records, open to inspection by any citizen of Tennessee, excluding social security numbers.

Federal or Tennessee state government-issued photo ID is required to vote unless exception applies.

Warning: Knowingly giving false information to register to vote or attempting to register when not qualified is a felony punishable by not less than two (2) years nor more than twelve (12) years imprisonment or a fine of \$5,000 or both.

FOR COUNTY ELECTION COMMISSION USE ONLY

Mail _____ Reg # _____ Approved _____
Effective Date _____ P/A _____
District _____ Precinct _____ Ward _____

1 VOTER ELIGIBILITY

Are you a citizen of the United States?

☐ YES ☐ NO

Are you a resident of the State of Tennessee?

☐ YES ☐ NO

Will you be 18 or older on or before Election Day?

☐ YES ☐ NO

If you answered "No" in response to any of the above, do not complete this form.

2 PERSONAL DETAILS

Last Name: _____ First Name: _____ Middle Name: _____ Suffix: _____

SSN: ____/____/____ Date of Birth: ____/____/____ Sex: ☐ M ☐ F Race (optional): _____

Place of Birth (city/state): _____ Phone: (____) _____ - _____

Residential Address: _____ (no PO box) Apt #: _____ City: _____

State: _____ Zip Code: _____ County: _____ Email (optional): _____

Mailing Address (if different): _____

3 LAST ADDRESS OF VOTER REGISTRATION (if any)

Name: _____ Address: _____ Apt #: _____

City: _____ State: _____ Zip Code: _____ County: _____

4 FELONY CONVICTION Have you ever been convicted of a felony? (If expunged, answer "no") ☐ YES ☐ NO If yes, provide the following information (if known).

Crime(s): _____ Date (mo./yr.): _____

Place (city/state): _____ Have you received a pardon or had your voting rights restored? ☐ YES ☐ NO If yes, provide copy of document.

5 VOTER DECLARATION: I, being duly sworn on oath (or affirmation), declare that the above address is my legal residence and that I plan to remain at such residence for an undetermined period of time and say that to the best of my knowledge and belief all of the statements made by me are true.

X _____
Signature of Applicant

Date

Signature of Person Assisting Applicant

Address of Person Assisting Applicant



ss-3010 (Rev. 09/20)

FROM:

PLACE
STAMP
HERE
The Post Office
will not deliver
without postage.



Voter Registration Document - Please Do Not Delay

TO:

_____ **COUNTY ELECTION COMMISSION**

TRANSFERRED TO NEW ADDRESS

New Address (and mailing address if different)	District/Ward/ Precinct	Clerk	Date	Additional Information

Exhibit 7

In the Matter of:

NAACP, et al.

VS

LEE, et al.

ELIZABETH HENRY-ROBERTSON

June 18, 2024



BERES & ASSOCIATES
COURT REPORTERS

www.beresandassociates.com
615.742.2550 | info@beresandassociates.com

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT TENNESSEE
NASHVILLE DIVISION

TENNESSEE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
on behalf of itself and its
members, et al.,

Plaintiffs Civil Action No. 3:20-cv-01039
vs. JUDGE CAMPBELL
MAGISTRATE JUDGE FRENSLEY

WILLIAM LEE, in his official
capacity as Governor of the
State of Tennessee, et al.,

Defendant

DEPOSITION OF:

ELIZABETH HENRY-ROBERTSON

Taken on behalf of the Plaintiffs

Tuesday, June 18, 2024

3:59 p.m.

BERES & ASSOCIATES COURT REPORTERS
Virginia Dodge, RDR, CRR, LCR
P.O. Box 190461
Nashville, Tennessee 37219-0461
(615) 742-2550
virginia@beresandassociates.com

1 APPEARANCES:

2 For the Plaintiffs:

3 Keeda J. Haynes, Esq.
4 Free Hearts
5 2013 25th Avenue North
6 Nashville, TN 37208
(615) 745-1117 Ext. 705
keeda@freeheartsorg.com

7 and

8 Blair Bowie, Esq.
9 Aseem Mulji, Esq.
10 Gicola Lane, Restore Your Vote Advocate
11 Valencia Richardson, Esq. (Via
12 Videoconference)
13 Aimee Pruitt, Legal Assistant
14 Campaign Legal Center
15 1101 14th Street NW
Suite 400
Washington, DC 20005
(202) 736-2200
bbowie@campaignlegal.org
amulji@campaignlegal.org
glane@campaignlegal.org
vrichardson@campaignlegal.org

16 and

17 Charles K. Grant, Esq.
18 Baker, Donelson, Bearman,
19 Caldwell & Berkowitz, P.C.
20 1600 West End Avenue
Suite 2000
Nashville, TN 37203
(615) 726-5767
cgrant@bakerdonelson.com

1 APPEARANCES (continued):

2
3 For the Defendant:

4 Zachary L. Barker, Assistant Attorney General
5 Dawn Jordan, Senior Counsel
6 Bradley Krause, Intern
7 Assistant Attorney General of
8 the State of Tennessee
9 P.O. Box 20207
10 Nashville, TN 37219
11 (615) 532-4098
12 zachary.barker@ag.tn.gov
13 dawn.jordan@ag.tn.gov
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

EXAMINATION OF ELIZABETH HENRY-ROBERTSON

PAGE

By Attorney Bowie6

E X H I B I T S

PAGE

Exhibit 1, Notice of Deposition Pursuant to7
Fed. R. Civ. P. 30(b)(6)

Exhibit 2, T.C.A. 2-19-14334

Exhibit 3, Tennessee Mail-In Application for41
Voter Registration (Rev. 09/20)Exhibit 4, Tennessee Mail-In Application for45
Voter Registration (Rev. 06/24)Exhibit 5, Email dated Tue, 12 Dec 202350
22:40;21 +0000Exhibit 6, Email dated Tue, 13 Feb 202459
14:59:01 +0000Exhibit 7, Letter dated Friday, March 1, 202462
(Cleveland Price)Exhibit 8, Letter dated 6/3/24 (Dawn65
Harrington)Exhibit 9, Letter dated Tuesday, February 18,66
2020 (Dawn Harrington)Exhibit 10, Email dated Wed, 007 Feb 202480
14:30:56 +0000Exhibit 11, Letter dated Monday, February 5,82
2024 (Andrea Danielle Isham)

E X H I B I T S

PAGE

Exhibit 12, Letter dated Monday, February 5, 2024 (Billy Joe Johnson)	86
Exhibit 13, Letter dated Monday, February 5, 2024 (Lance Sterling Johnston)	89
Exhibit 14, Letter dated Wednesday, February 7, 2024 (Jason James Czaplewski)	91
Exhibit 15, Letter dated Monday, February 12, 2024 (Kathleen H. Baker)	96
Exhibit 16, Letter dated Wednesday, February 21, 2024 (Thomas Henry Banks)	108
Exhibit 17, Letter dated Monday, February 5, 2024 (Krystal Paige Brown)	116
Exhibit 18, Letter dated Wednesday, February 21, 2024 (Stephen Quentin Brown)	119
Exhibit 19, Letter dated Wednesday, February 21, 2024 (Kevin Eugene Shepard)	124

(Original exhibits returned to Attorney Bowie.)

1 The deposition of ELIZABETH HENRY-ROBERTSON was
2 taken by counsel for the Plaintiffs pursuant to notice,
3 at the offices of Baker, Donelson, Bearman, Caldwell &
4 Berkowitz, PC, 1600 West End Avenue, Suite 2000,
5 Nashville, Tennessee, commencing at 3:59 p.m. on
6 Tuesday, June 18, 2024, for all purposes under the
7 Federal Rules of Civil Procedure.

8 The formalities as to notice, caption,
9 certificate, et cetera, are waived. It is agreed that
10 Virginia Dodge, being a licensed court reporter and
11 notary public for the State of Tennessee, may swear the
12 witness, and the reading and signing of the completed
13 deposition was not discussed.

14 * * * * * * * * *

15 ELIZABETH HENRY-ROBERTSON
16 was called as a witness, and after having been first
17 duly sworn or affirmed, testified as follows:

18 EXAMINATION

19 BY ATTORNEY BOWIE:

20 Q. Good afternoon, Ms. Henry-Robertson.

21 A. Hello.

22 Q. Thank you for coming back.

23 A. Yes.

24 Q. As you may remember, my name is Blair Bowie.
25 I am counsel for plaintiffs in the Tennessee NAACP vs.

1 they -- I know that some of the older letters have been
2 scanned.

3 Q. How long do you think it took Lou to check to
4 see if this person was in the database?

5 A. To see if he was in the restoration database?
6 It doesn't take long.

7 Q. Right. Quick search?

8 A. As long as we have the Social Security
9 number, that makes it quicker.

10 Q. Right. And if somebody's registering to
11 vote, they would have provided that?

12 A. Correct.

13 Q. Right?

14 A. Correct.

15 Q. So somebody registers to vote. They check on
16 the form that they have had their rights restored
17 before. The AOE's can just email Lou and say, "Hey, can
18 you look this up?"

19 A. For the restoration.

20 Q. The whole thing shouldn't take very long,
21 right?

22 A. Not too long.

23 Q. Have you heard of the office getting a lot of
24 these requests?

25 A. Not a lot.

1 Of individuals who said that they'd been
2 previously restored?

3 Q. Mm-hmm.

4 A. Not a lot. I know we have had that issue
5 come up. Yes.

6 Q. How many would you say?

7 A. I know one in particular. But since it's not
8 a -- I mean it's something he can just look up.
9 There's not a reason for him to tell us that he's
10 searching to see if someone's restored.

11 Q. Okay. But he hasn't complained that this is
12 taking up a lot of his time?

13 A. No.

14 Q. You haven't had to hire additional staff to
15 deal with this?

16 A. No.

17 Q. So this is not a burdensome task?

18 A. I wouldn't say so.

19 Q. So would you anticipate that if the Elections
20 Division said to all registrars, "When somebody submits
21 a registration form and they check that they've already
22 had their rights restored, that it would be -- that you
23 should reach out to us and we will verify that," do you
24 think that that would add a lot of work?

25 A. So that would be a little -- almost have to

1 know -- again, I don't know the percentage of those.
2 If it's a few a day, then no. But you're talking about
3 from 95 counties, it would add up.

4 But that's something that wouldn't know
5 without knowing what percentage of that does he do
6 right now.

7 But the database is already there so --

8 Now, the other thing that he mentioned that
9 does take time is the felony search. If you'll notice,
10 he says, "Based on my search, Mr. Malone has not
11 committed a felony since being restored."

12 That is what takes a lot of time.

13 Q. How long does that take?

14 A. That can be an issue with whether or not that
15 person was convicted here in Tennessee. We can look at
16 our database that TDOC has provided.

17 If it's federal, you know, there is a website
18 or search -- I think it's Westlaw that we use. And
19 that allows us to look nationally like all throughout
20 the United States for those states that participate in
21 that.

22 Not every state does is my understanding.
23 Alabama does not have their felony records, conviction
24 records, on that website. So you have to contact
25 Alabama individually to try to get -- to find out if

1 someone has been convicted of a felony.

2 Q. Which you would only do if they had indicated
3 they had an Alabama conviction on their registration
4 form?

5 A. No. When he does a felony search, he's going
6 to be looking broadly. Just not everyone remembers
7 exactly where it may have occurred.

8 So no. I wouldn't say that he's only going
9 to limit it to one state.

10 Q. So he looks in the database. He sees that
11 this person has been restored in 2001?

12 A. Yes.

13 Q. And then he still does the felony search?

14 A. Correct. To see if there's been any other
15 felonies since that time.

16 Q. And if Mr. Malone had provided a document
17 showing that he had his voting rights restored in 2001,
18 there would still be a possibility that he'd had a
19 conviction since then, right?

20 A. Correct.

21 Q. So would Lou still run the felony search?

22 A. Probably.

23 Q. So the document wouldn't make a difference
24 there?

25 A. Well, it would make a difference if he

1 doesn't have any other felony.

2 Q. Right. But between looking in the database
3 and just seeing whether it says he's been restored or
4 having a document in hand that says he was restored,
5 the possibility is still open that he's been convicted
6 of a felony after that?

7 A. That's correct.

8 Q. Regardless?

9 A. That's correct.

10 (Email dated Tue, 13 Feb 2024 14:59:01
11 +0000 marked Exhibit 6.)

12 Q. (By Attorney Bowie) Okay. So this situation
13 appears to be a little bit different. It looks like
14 Lou is looking into this because somebody is running
15 for office, if you start with the email at the bottom.

16 A. Okay.

17 Yeah. So this is an example of when our
18 database is not as comprehensive at least as we would
19 like it to be.

20 Q. Because it doesn't show the document that
21 restored his voting rights?

22 A. It doesn't have a copy. Mm-hmm.

23 Q. And just to get it on the record, this one
24 was in 2007?

25 A. Yes.

1 Q. Okay.

2 A. And the distinction or the importance of the
3 distinction where you see that D.J. says that he
4 cannot -- the database does not indicate whether it was
5 by court order or COR is because, as you know, under
6 40-20-114, in order to run for public office, they have
7 to have a court order restoring their rights. It's not
8 just the COR.

9 Q. Right. Okay.

10 A. So for registering to vote, the fact that he
11 was in our database for having been restored is
12 sufficient for registration of registering to vote, but
13 not necessarily to run for -- he was running for --
14 what was it? State representative.

15 Q. Okay. So here again, this person -- or Lou
16 was able to find --

17 A. It was D.J.

18 Q. -- find this person in the database and
19 verify he had had his rights restored?

20 A. It was D.J. D.J. Hall.

21 Q. Oh, I'm sorry. D.J. Thank you.

22 Here, D.J. was able to find this person in
23 the database presumably, right?

24 A. Yes.

25 Q. He didn't say that, but that's your

1 understanding?

2 A. Well, we have a record of two felony
3 convictions. Well, it starts out it appears he was
4 restored on October 29, 2007. We have a record of a
5 conviction, but what he's saying is we don't have a
6 copy of the restoration and the database does not
7 indicate whether it was by court order.

8 I think the only reason he went to that
9 second step is because it was someone who tried to run
10 for public office.

11 Q. Right. He wanted to see if there was a court
12 order?

13 A. Correct.

14 Q. Yes. Okay.

15 But this took D.J. one day to respond to; is
16 that right?

17 A. I didn't look at the date.

18 Relatively. Yes.

19 Q. And you said earlier that you think that the
20 records are more complete in terms of actually having
21 copies of the restoration documents starting in the
22 late 2010s?

23 A. I would have to --

24 So there was a point when we kept a copy of
25 the restoration letter in our physical files. And so

1 at a certain point, we scanned those. And it was my
2 understanding that those were kept, but I may be
3 mistaken.

4 Q. But do you know what that point in time was
5 when he started keeping them?

6 A. No, I don't.

7 Q. Here, he says, "As his restoration was from
8 2007, we don't have a copy of his restoration."

9 A. Right.

10 Q. So D.J. doesn't seem surprised --

11 A. Right.

12 Q. -- that it's not there in 2007?

13 A. That's right.

14 ATTORNEY BOWIE: Okay. Here's one more.

15 (Letter dated Friday, March 1, 2024

16 (Cleveland Price) marked Exhibit 7.)

17 Q. (By Attorney Bowie) Here, we have a
18 situation where somebody had a grace period conviction.
19 Is that right?

20 A. Yes.

21 Q. And on this restoration letter, it says that
22 your office has verified that the individual has that
23 grace period conviction. Is that correct?

24 A. Yes.

25 Q. How would that verification happen?

1 A. I would presume that they found a copy --
2 well, not a copy. But they probably found it in the
3 felony database with TDOC.

4 Q. So in July 2023, your office adopted a
5 policy -- or you put out a memo, I should say, telling
6 the Administrative Office of Elections to not request
7 additional documentation from people who say that they
8 have grace period convictions on the form. Is that
9 right?

10 A. That's correct.

11 Q. Have you seen a large increase in these kinds
12 of inquiries to your office?

13 A. I do think we've seen an increase in the
14 felony search increase.

15 So a person who's applying to vote, the
16 counties are still wanting to see that there's no other
17 felony, given the time from when that felony may have
18 occurred.

19 So I think the felony searches are what's
20 taking up more time now.

21 Q. About how many felony searches has your
22 office been asked to do?

23 A. That's a routine thing for Lou. That's a
24 daily task that he does. I did not ask him to quantify
25 it.

1 But that's something that he does daily.

2 Q. Okay. Has he indicated to you that he's
3 feeling the pressure of having too many of those?

4 A. No. He doesn't complain.

5 Q. Okay. Have you had to hire additional staff
6 to handle all the additional demand here?

7 A. No.

8 Q. Okay. So would you say that it's been a
9 large increase or just an increase?

10 A. I would say it's been steady. I don't know
11 about an increase, but it's a steady task. Like I
12 said, it's something he knows he'll have to do at some
13 point during the day. He's going to get that request.

14 Q. And that's an increase in requests to verify
15 that somebody had a grace period conviction?

16 A. Not necessarily. It's just from the point
17 where the counties no longer reject, but the person has
18 indicated they have a felony conviction, there's this
19 time period they look at.

20 I think there's been their increase in saying
21 is there any other felony.

22 Q. And if somebody who had a grace conviction,
23 let's say Mr. Price here, had given the AOE the court
24 order showing that his conviction was during the grace
25 period, might the AOE still wonder, "Okay. Well, have

1 you had any felonies since?"

2 A. Some would. Yes.

3 Q. And so they may still ask Lou to run that
4 search?

5 A. Yes.

6 Q. Okay. So the document doesn't actually
7 really make much of a difference there?

8 A. Well, again, it does because if, as here, he
9 had no other felonies, and so he didn't have to do
10 anything further.

11 Q. Right. So it takes away an additional step?
12 Or it takes away the first step of verifying that the
13 conviction was during the grace period but not Lou
14 having to run the full felony search?

15 A. For any, yes, subsequent felonies.

16 Q. So they may still ask for the full felony
17 search regardless of the document?

18 A. They may.

19 Q. And there's nothing requiring that they ask
20 for a full felony search; is that right?

21 A. That is correct.

22 ATTORNEY BOWIE: One more here.

23 (Letter dated 6/3/24 (Dawn Harrington)
24 marked Exhibit 8.)

25 Q. (By Attorney Bowie) I know this document

C E R T I F I C A T E

I, Virginia Dodge, Registered Diplomat
Reporter and Tennessee Licensed Court Reporter and
Notary Public, do hereby certify that I recorded to the
best of my skill and ability by machine shorthand the
deposition contained herein, that same was reduced to
computer transcription by myself, without the use of
automatic speech recognition, and that the foregoing is
a true, accurate and complete transcript of the
deposition testimony heard in this cause.

I further certify that the witness was first
duly sworn by me and that I am not an attorney or
counsel of any of the parties, nor a relative or
employee of any attorney or counsel connected with the
action, nor financially interested in the action.

This 20th day of June, 2024.

Virginia Dodge

Virginia Dodge

My Commission Expires: 8/23/2026
Tennessee LCR No. 734, Exp: 6/30/26
Tennessee CCR No. 0499, Exp: 6/30/26
RDR/CRR #835835

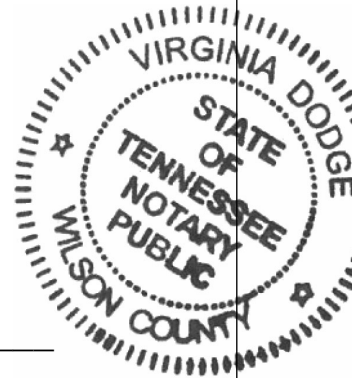


Exhibit 8

In the Matter of:

NAACP, et al.

VS

LEE, et al.

MARK GOINS

June 18, 2024



BERES & ASSOCIATES
COURT REPORTERS

www.beresandassociates.com
615.742.2550 | info@beresandassociates.com

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT TENNESSEE
NASHVILLE DIVISION

TENNESSEE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
on behalf of itself and its
members, et al.,

Plaintiffs Civil Action No. 3:20-cv-01039
JUDGE CAMPBELL
vs. MAGISTRATE JUDGE FRENSLEY

WILLIAM LEE, in his official
capacity as Governor of the
State of Tennessee, et al.,

Defendant

VIDEO RECORDED DEPOSITION OF:

MARK GOINS

Taken on behalf of the Plaintiffs

Tuesday, June 18, 2024

9:37 a.m.

BERES & ASSOCIATES COURT REPORTERS
Virginia Dodge, RDR, CRR, LCR
P.O. Box 190461
Nashville, Tennessee 37219-0461
(615) 742-2550
virginia@beresandassociates.com

1 APPEARANCES:

2 For the Plaintiffs:

3 Keeda J. Haynes, Esq.
4 Free Hearts
5 2013 25th Avenue North
6 Nashville, TN 37208
(615) 745-1117 Ext. 705
keeda@freeheartsorg.com

7 and

8 Blair Bowie, Esq.
9 Aseem Mulji, Esq.
10 Gicola Lane, Restore Your Vote Advocate
11 Valencia Richardson, Esq. (Via
12 Videoconference)
13 Aimee Pruitt, Legal Assistant
14 Amanda Harrington Sargent, Intern
15 Campaign Legal Center
16 1101 14th Street NW
Suite 400
Washington, DC 20005
(202) 736-2200
bbowie@campaignlegal.org
amulji@campaignlegal.org
glane@campaignlegal.org
vrichardson@campaignlegal.org

17 and

18 Charles K. Grant, Esq.
19 Baker, Donelson, Bearman,
20 Caldwell & Berkowitz, P.C.
1600 West End Avenue
Suite 2000
Nashville, TN 37203
(615) 726-5767
21 cgrant@bakerdonelson.com

1 APPEARANCES (continued):

2
3 For the Defendant:

4 Zachary L. Barker, Assistant Attorney General
5 Dawn Jordan, Senior Counsel
6 Bradley Krause, Intern
7 Assistant Attorney General of
8 the State of Tennessee
9 P.O. Box 20207
Nashville, TN 37219
(615) 532-4098
zachary.barker@ag.tn.gov
dawn.jordan@ag.tn.gov

10 Also Present:

11 Elizabeth Henry-Robertson
12 Todd Davis, Videographer
13 Legal Tech Services
14 (615) 337-3494
15 todd.legaltech@gmail.com
16
17
18
19
20
21
22
23
24
25

I N D E X

EXAMINATION OF MARK GOINS

PAGE

By Attorney Haynes	6
By Attorney Bowie	78
By Attorney Haynes	141
Telephonic Hearing Before	108
Magistrate Judge Frensley	

E X H I B I T S

PAGE

Exhibit 1, Certificate of Restoration of Voting Rights for Persons Convicted of a Felony on or after May 18, 1981	41
Exhibit 2, T.C.A. 40-29-204	51
Exhibit 3, T.C.A. 39-17-1307	56
Exhibit 4, T.C.A. 39-12-301	59
Exhibit 5, T.C.A. 40-20-114	69
Exhibit 6, Letter dated Friday, February 9, 2024	79
Exhibit 7, Letter dated March 14, 2024	82
Exhibit 8, Letter dated March 5, 2024	101
Exhibit 9, Third Supplemental Declaration of Mark Goins, Coordinator of Elections, Tennessee Secretary of State, Division of Elections	116

(Original exhibits returned to Attorney Bowie.)

1 The video recorded deposition of MARK GOINS was
2 taken by counsel for the Plaintiffs pursuant to notice,
3 at the offices of Baker, Donelson, Bearman, Caldwell &
4 Berkowitz, PC, 1600 West End Avenue, Suite 2000,
5 Nashville, Tennessee, commencing at 9:37 a.m. on
6 Tuesday, June 18, 2024, for all purposes under the
7 Federal Rules of Civil Procedure.

8 The formalities as to notice, caption,
9 certificate, et cetera, are waived. It is agreed that
10 Virginia Dodge, being a licensed court reporter and
11 notary public for the State of Tennessee, may swear the
12 witness, and the reading and signing of the completed
13 deposition was not discussed.

14 * * * * * * * * *

15 THE VIDEOGRAPHER: This is the video
16 deposition taken of Mark Goins on 6/18/2024 at the time
17 indicated on the video screen, which is 9:37 a.m. Full
18 introduction has been waived.

19 Would the court reporter please swear in the
20 witness and counsel introduce themselves.

21 (Witness sworn or affirmed.)

22 ATTORNEY HAYNES: I am Keeda Haynes,
23 K-E-E-D-A H-A-Y-N-E-S, counsel for the plaintiff.

24 ATTORNEY BARKER: Zachary Barker of the
25 Tennessee Attorney General's office, counsel for the

1 defendants.

2 ATTORNEY JORDAN: Dawn Jordan, also with the
3 Attorney General's office for the defendants.

4 ATTORNEY GRANT: Charles Grant, counsel for
5 plaintiffs.

6 ATTORNEY MULJI: Aseem Mulji, counsel for
7 plaintiffs.

8 MS. PRUITT: Aimee Pruitt, legal assistant.

9 ATTORNEY BOWIE: Blair Bowie, counsel for
10 plaintiffs.

11 ATTORNEY HAYNES: Thank you.

12 MARK GOINS
13 was called as a witness, and after having been first
14 duly sworn or affirmed, testified as follows:

15 EXAMINATION

16 BY ATTORNEY HAYNES:

17 Q. Good morning, Mr. Goins.

18 A. Good morning.

19 Q. How are you?

20 A. I'm good.

21 Q. Would you prefer I call you Mr. Goins or
22 Mark?

23 A. You can call me Mark. That's fine.

24 Q. Okay. All right. I ask that because we know
25 each other already on a first-name basis so --

1 Q. And implemented. Okay.

2 And what does it mean when it's implemented?

3 A. Implemented means that it's the form that's
4 being distributed by the counties, the different
5 agencies. It's the form that when a voter registration
6 group shows up, that they're able to -- that that's the
7 form that --

8 So if a third party is doing a voter
9 registration group, many times they will get the forms
10 from the local county election commission. This would
11 be the form that they would get from them.

12 Q. But you've said you can't retract forms that
13 are already out there, right?

14 A. I said -- I didn't say you can't. I said it
15 would be -- it would be very difficult.

16 I mean absolutely. If we've given forms to a
17 third party or even if some of these agencies have
18 them, it's very difficult to get those.

19 We changed the form many years ago, and I
20 learned this with TennCare. For a long time, the
21 TennCare -- even though we told them, TennCare
22 continued to distribute the older form. And this went
23 on for a long time.

24 Q. Was that the last time you updated the form?

25 A. No. We've updated since then, but it took a

1 long time to get integrated.

2 Q. When was the last time you updated the form?

3 A. I'd have to look at the voter registration
4 form. We've done it, I think talks with you all, if
5 I'm correct, but --

6 Q. 2020?

7 A. I think so. I think it took almost a year to
8 get it implemented. And I think you all pointed out it
9 still -- we still had issues, that not everybody was
10 using that form.

11 I mean that's the problem you've got.
12 There's so many moving parts to getting something
13 distributed.

14 Q. So you wouldn't have been able to edit and
15 create that new form within 25 days?

16 A. We could edit the form, create the form.
17 Getting the form vetted with the different
18 agencies and implemented, no.

19 Q. And so all of that would be costs that you
20 would still have to undertake if the stay is lifted?

21 A. If a court orders us to do that, we will in
22 good faith do what we can. I don't want to be held in
23 contempt of a court order. I'm not saying we can get
24 it done. It would be very doubtful if we could get it
25 done in election setting.

1 Because the problem is it all hits you at one
2 time. You've got so much going on. I mean we've got
3 early voting going on.

4 I mean it is -- and I'm under oath, and I'll
5 tell you. 10 p.m., 9:30, I don't know when the last
6 time I've gone home before -- you know, last couple
7 weeks, I've been working 10, 10:30, 9, 8.

8 And that's at night. I mean I may have had
9 the luxury of going home at 7 one night or 6:30. But
10 that's the nature of this.

11 And so anything that throws you off, then
12 suddenly, you're looking at 24 hours in a day, and
13 you're working 18 to 20, and that's when errors occur.

14 And you've got to look at the whole election
15 as a process. It's not just distributing a form. It's
16 everything going on. This is our Super Bowl.

17 Q. Yeah.

18 A. We call it our Super Bowl.

19 Q. I'm just asking about the form because that's
20 what you're talking about here, and then you're
21 pointing to particular expenses related to that. So
22 I'm specifically --

23 A. No, ma'am.

24 Q. I'm sorry. I'm specifically asking you --

25 A. No, ma'am.

1 Q. -- you still have to incur the expenses to
2 edit, print --

3 A. No, ma'am. That's not what I said.

4 Q. No. That's the question.

5 A. I understand your question, but you're not --
6 you're trying to narrow it down. And then I very
7 specifically said -- and I'm referring to the things
8 that rebut.

9 I talk about the work-intensive Presidential
10 election cycle and such changes.

11 So I get an opportunity to answer my
12 question. That's my understanding, and that's the
13 answer to my question.

14 You're taking one thing in a vacuum. You're
15 putting it in a silo.

16 Q. I'm trying to break apart the pieces to
17 understand what the cost of each of the pieces are.

18 A. Well, the biggest thing is I want to have
19 human -- I don't want to have people walking out the
20 door because they're overworked and can't take it
21 anymore.

22 Q. I understand that. Now can I ask you a
23 question?

24 Do you still --

25 A. Yes.

1 Q. -- have to edit, vet, print and distribute a
2 form if the court stay was lifted? You are saying that
3 those are all expenses you would still have to incur.

4 A. Oh, well, so the most recent -- the most
5 recent --

6 My understanding is no, because the most
7 recent order that Judge Campbell put out said something
8 about alleviating our concern with the form.

9 So I think based on the most recent -- or
10 actually, he was -- I don't know if that's an order,
11 whatever it was, where he said you all will have an
12 opportunity to respond to the request for a stay. He
13 put language in there about the form.

14 Q. So you wouldn't have to change the form is
15 your understanding?

16 A. I don't -- do you have the most recent order
17 from Judge Campbell?

18 Q. No. But I'm asking just about this
19 declaration.

20 A. You're asking specifically if the stay was
21 lifted. And I think there's been subsequent --
22 something to the last order that would change my
23 understanding, but I would need to see it to make sure.
24 I think there's language in there that says we wouldn't
25 have to change the form.

1 Q. Okay.

2 A. Am I -- am I incorrect on that? I think
3 that's right.

4 Q. Okay. And if you were ordered to change the
5 form, everything you've said here about the process,
6 this is an accurate description of what you would still
7 have to do, going forward; is that right?

8 A. If we had to change the form, yes.

9 Q. Okay. Editing, vetting, printing,
10 distributing, all of that, you would still have to do?

11 A. Yes.

12 ATTORNEY BOWIE: Okay. All right. I'll
13 pause there. We can go off the record.

14 THE VIDEOGRAPHER: Off the record. Time is
15 2:48. We're off the record.

16 (Off-record discussion.)

17 THE VIDEOGRAPHER: Time is 2:49. We're back
18 on the record.

19 ATTORNEY BARKER: My understanding is at this
20 point, we are transitioning back to questions about the
21 conversations between Coordinator Goins and the
22 legislature, the Tennessee General Assembly.

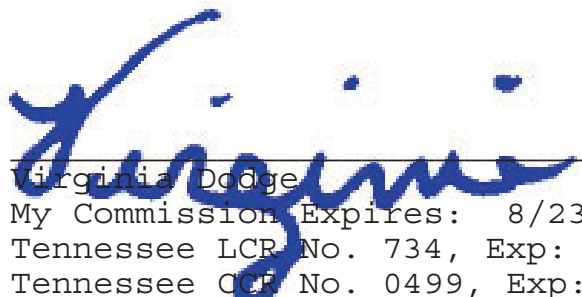
23 At this point, the defendants and the State
24 of Tennessee would assert that the legislative
25 privilege applies to communications between Coordinator

C E R T I F I C A T E

I, Virginia Dodge, Registered Diplomat
Reporter and Tennessee Licensed Court Reporter and
Notary Public, do hereby certify that I recorded to the
best of my skill and ability by machine shorthand the
deposition contained herein, that same was reduced to
computer transcription by myself, without the use of
automatic speech recognition, and that the foregoing is
a true, accurate and complete transcript of the
deposition testimony heard in this cause.

I further certify that the witness was first
duly sworn by me and that I am not an attorney or
counsel of any of the parties, nor a relative or
employee of any attorney or counsel connected with the
action, nor financially interested in the action.

This 20th day of June, 2024.



Virginia Dodge
My Commission Expires: 8/23/2026
Tennessee LCR No. 734, Exp: 6/30/26
Tennessee CCR No. 0499, Exp: 6/30/26
RDR/CRR #835835

